

TITLE XVIII
EARLY CHILDHOOD

CHAPTER 120
EARLY ACCESS INTEGRATED SYSTEM OF
EARLY INTERVENTION SERVICES

DIVISION I
PURPOSE, GOAL, AND OUTCOMES

281—120.1(34CFR303) Purpose. The overall purpose of this chapter is to establish administrative rules in accordance with Iowa Code section 256B.2 and 20 U.S.C. Chapter 33 of the Individuals with Disabilities Education Act and 34 CFR 303, Early Intervention Program for Infants and Toddlers with Disabilities, July 1, 1998, relative to the following:

1. Maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, inter-agency system of early intervention services for eligible infants and toddlers with conditions or developmental delays throughout the state including those living in urban areas, in rural areas, and on Indian reservations;

2. Facilitate the coordination of payment for early intervention services from federal, state, local and private sources, including public and private insurance coverage;

3. Enhance Iowa's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to eligible children and their families; and

4. Enhance the capacity of state and local agencies and service providers to identify, evaluate and meet the needs of historically underrepresented populations, particularly minority, low-income, inner-city and rural populations. [34 CFR 303.1; 303.20; 303.100]

These rules apply to the signatory agencies identified in subrule 120.7(4), which include the state departments of education, public health, and human services, and the state's title V program for children with special health care needs, referred to as child health specialty clinics.

281—120.2(34CFR303) Overall goal and outcomes of Early ACCESS. The overall goal of Early ACCESS is to provide early intervention resources, supports, and services to eligible children and their families within a coordinated, integrated system. Early ACCESS is aimed at the following four outcomes:

1. To enhance the development of eligible children;
2. To reduce the educational costs to society by minimizing the need for special education and related services after such children reach school age;

3. To maximize the potential of eligible children for independent living in society; and

4. To enhance the capacity of families to meet the needs of their eligible children. [20 U.S.C. 1431(a)]

281—120.3 Reserved.

DIVISION II
DEFINITIONS

281—120.4(34CFR303) Definitions. In this chapter, unless the context otherwise indicates, the following definitions are used:

“Assessment” means the ongoing procedures described in rule 281—120.27(34CFR303) used by appropriate qualified personnel throughout the period of a child’s eligibility to identify:

1. The child’s unique strengths and needs and the services appropriate to meet those needs; and
2. The resources, priorities, and concerns of the family, as well as the supports and services necessary to enhance the family’s capacity to meet the developmental needs of the eligible child. [34 CFR 303.322(b)(2)]

“Child find” means that children who are suspected as being eligible for early intervention services are identified, located, and evaluated at no cost to the family. [34 CFR 303.165; 300.321(b)(1)]

“Community empowerment areas” means partnerships in local communities with broad representation to lead collaborative efforts involving education, health, and human service programs and services on behalf of the children, families and other citizens residing in the geographic area. Community empowerment areas mobilize individuals and their communities to achieve desired results in order to improve the well-being of and quality of life for families with young children from birth through the age of five years. [Iowa Code chapter 28.2(3)]

“Community partners” means local providers of signatory agencies, as well as other public or private community programs or agencies, including Early Head Start, childcare providers, community empowerment areas, and health programs, that work with Early ACCESS, as described in subrule 120.8(2). [34 CFR 303.522]

“Consent” means:

1. A parent has been fully informed of all information relevant to the activity for which consent is sought, in a parent’s native language or other mode of communication;
2. A parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom; and
3. A parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. [34 CFR 303.401(a)(1)-(3)]

“Council” means the Iowa council for Early ACCESS. The council advises and assists the lead agency in the operation of the state’s Early ACCESS system. [34 CFR 303.8; 303.600; 303.650]

“CSPD” means a comprehensive system of personnel development.

“Day” means calendar day. [34 CFR 303.9]

“Early ACCESS” is the statewide comprehensive, interagency system of integrated early intervention services that supports eligible children and their families. Early ACCESS is part of a larger early care, health, and education system. Services are provided by public and private agencies in partnership with families. The purpose of Early ACCESS is to work together in identifying, coordinating and providing needed services and resources, including informal supports provided by communities, that will help families assist their infants or toddlers to grow and develop. [34 CFR 303.11]

“Eligible children” means infants and toddlers from birth to the age of three years who meet one of the following criteria:

1. Have a condition, based on informed clinical opinion, known to have a high probability of resulting in later delays in growth and development if early intervention services are not provided; or [34 CFR 303.16(b); 303.300(c)]

2. Have a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures and based on informed clinical opinion, in one or more of the following developmental areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, or adaptive development. [34 CFR 303.16(a); 303.161; 303.300(a)]

“Evaluation” means the procedures described in subrule 120.27(4) and used by appropriate qualified personnel trained to use appropriate methods or procedures to determine a child’s initial and continuing eligibility for Early ACCESS consistent with the definition of “eligible children,” including determining the status of the child in each of the developmental areas. [34 CFR 303.322(b)(1)]

“Family” means the persons who are primarily responsible for the care and nurturing in the child’s daily life including parents or guardians, persons acting as parents, or siblings.

“Grantee” means a recipient of federal Part C funds or state funds designated for Early ACCESS that has the fiscal and legal obligation for ensuring that the Early ACCESS system is carried out regionally.

“IFSP team” means a group of participants, including a parent, described in rule 281—120.35(34CFR303) responsible for developing, reviewing and, if appropriate, revising an IFSP for an eligible child. [34 CFR 303.343]

“Include” or *“including”* means that the items named are not all of the possible items that are covered whether like or unlike the ones named. [34 CFR 303.15]

“Individualized education program” or *“IEP”* means the written record of an eligible individual’s special education and related services for children aged 3 years through 21 years with disabilities as defined in rule 281—41.5(256B,34CFR300). [34 CFR 300.340(a)]

“Individualized family service plan” or *“IFSP”* means a written plan for providing early intervention services to an eligible child and the child’s family in accordance with division VII of these rules. [34 CFR 303.340(b)]

“Individuals with Disabilities Education Act” or *“IDEA”* means federal statute at 20 U.S.C. §1401 et seq., formerly the Education of the Handicapped Act (EHA), P.L. 94-142, which is the statutory authority for these rules. Regulations implementing IDEA are found at 34 CFR 300, 303.

- *“Part B”* means Part B of IDEA, 34 CFR 300, Assistance to States for the Education of Children with Disabilities, July 1, 1999, that applies to eligible children, as defined in rule 281—41.5(256B,34CFR300), who are transitioning to a preschool special education program.

- *“Part C”* means Part C of IDEA, 34 CFR 303, Early Intervention Program for Infants and Toddlers with Disabilities, July 1, 1998, that establishes the infants and toddlers program for eligible children from birth to the age of three years.

“Informed clinical opinion” means the integration of the results of evaluations, direct observations in various settings, and varied activities with the experience, knowledge, and wisdom of qualified personnel. Informed clinical opinion should be used in conjunction with best practice evaluation and assessment.

“Integrated system of Early ACCESS” means the statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for eligible children from birth to the age of three years and their families. [34 CFR 303.1(a)]

“Multidisciplinary” means the involvement of two or more disciplines or professions in the provision of integrated and coordinated early intervention services including evaluation and assessment activities and the development of the IFSP. [34 CFR 303.17]

“Native language,” when used with reference to a person with limited English-speaking ability, means the language or mode of communication normally used by the parent of the eligible child. In all direct contact with the child, communication shall be in the language normally used by the child and not that of a parent if there is a difference between the two. If a parent is deaf or blind, or has no written language, the mode of communication shall be that normally used by the person (such as sign language or Braille). [34 CFR 303.401(b); 303.403(c)]

“Natural environments” means settings that are natural or normal for a child who does not have a condition or developmental delay, including home and community settings. Whenever possible, intervention should be embedded into the child’s natural routines. [34 CFR 303.18]

“Parent” means (1) a biological or adoptive parent of a child; (2) a foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent; (3) a guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state; (4) a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom a child lives, or a person who is legally responsible for the child’s welfare; or (5) a surrogate parent who has been appointed in accordance with 34 CFR 300.519 or 20 U.S.C. 1439(a)(5).

The following criteria shall be used to determine whether a party qualifies as a “parent”:

a. Except as provided in paragraph “b,” the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified to act as a parent under this chapter, must be presumed to be the parent for purposes of these rules unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under (1) through (4) of the definition of “parent” to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this definition.

c. A public or private agency involved in the education or care of a child shall not serve as a child’s parent.

d. An employee or contractor with any public or private agency involved in the education or care of a child shall not serve as a parent in that employee’s or contractor’s official capacity.

“Part B” means Part B of IDEA, 34 CFR 300, Assistance to States for the Education of Children with Disabilities, July 1, 1999, that applies to eligible children, as defined in rule 281—41.5(256B,34CFR300), who are transitioning to a preschool special education program.

“Part C” means Part C of IDEA, 34 CFR 303, Early Intervention Program for Infants and Toddlers with Disabilities, July 1, 1998, that establishes the infants and toddlers program for eligible children from birth to the age of three years.

“Personally identifiable” means that information includes:

1. The name of the child, the child’s parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child’s or parent’s social security number; or
4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. [34 CFR 303.401(c)]

“Public agency” means the lead agency and any other political subdivision of the state that is responsible for providing early intervention services to children eligible under these rules and their families. [34 CFR 303.21]

“Qualified personnel” means persons who have met the entry-level requirements that are based on the highest requirement in the state applicable to the profession or discipline in which the person is providing early intervention services, as described in division V. [34 CFR 303.12(a)(3)(ii); 303.12(e); 303.22]

“Records” means those records that are maintained by a provider or agency that are directly related to the child, and any information pertaining to an eligible child. The type of records covered under this term is further defined in the regulations implementing the Family Education Rights and Privacy Act of 1974 (34 CFR 99). [34 CFR 303.402; 303.540]

“School year” means the period during which students who are 3 years of age through 21 years of age attend school.

“*Screening*” means a brief, systematic process conducted by individuals appropriately trained in the screening procedure which is designed to identify children who should receive more in-depth evaluation.

“*Service coordination*” means assistance and services provided by a service coordinator to an eligible child and the child’s family, as described in rule 281—120.15(34CFR303). [34 CFR 303.12(d)(11)]

“*Service coordinator*” means the person who assists the family in coordinating all services across agencies and serves as the single point of contact in helping families obtain the services and assistance they need, as described in rule 281—120.15(34CFR303). [34 CFR 303.23(a)]

“*Transition*” means a coordinated set of activities that prepare the child and family for leaving the Early ACCESS system to enter a Part B preschool program or other community services, as described in division VIII. [34 CFR 303.148]

281—120.5 and 120.6 Reserved.

DIVISION III
GOVERNANCE, GENERAL ADMINISTRATION, AND SUPERVISION

281—120.7(34CFR303) Early ACCESS system—state level.

120.7(1) *Early ACCESS statewide governance management structure.* The governance structure for the Early ACCESS system is described in the Early ACCESS interagency agreement and the federal Part C application.

120.7(2) *Lead agency.* The lead agency, appointed by the governor, is the fiscal and legal agent for administering federal funds under Part C and state funds specifically appropriated for Early ACCESS support. The state department of education was appointed lead agency on June 24, 1987. Responsibilities of the lead agency include:

- a. Developing and implementing policies and procedures regarding the types of information to be gathered and the policies and parameters for sharing of information across agencies and programs, as well as such information that might be necessary for an annual report to the governor and the U.S. Department of Education;
- b. Monitoring the agencies, institutions and organizations that provide early intervention services and supports;
- c. Enforcing any obligations imposed under Part C on the agencies listed in paragraph “b”;
- d. Providing technical assistance, if necessary, to the agencies, institutions and organizations listed in paragraph “b”;
- e. Correcting deficiencies that are identified through monitoring;
- f. Adopting and carrying out complaint procedures;
- g. Mediating any interagency disputes regarding early intervention services;
- h. Establishing policies related to how early intervention services to eligible children and their families shall be paid for;
- i. Establishing procedures to ensure the timely provision of services;
- j. Ensuring that the following functions and services are provided at public expense:
 - (1) Child find requirements;
 - (2) Evaluation and assessment functions;
 - (3) Service coordination;
 - (4) Development and review of IFSPs;
 - (5) Implementation of procedural safeguards; and
 - (6) Other components of the statewide system of Early ACCESS;

k. Maintaining a data system to be utilized for gathering information regarding early intervention services provided for eligible children in Early ACCESS; and

l. Monitoring use of funds. [34 CFR 303.500-303.525]

120.7(3) Iowa council for Early ACCESS. The council shall be established by the lead agency. Members must be appointed by the governor to meet the Part C mandate and to ensure that the membership reasonably represents the population of the state. The governor shall designate a member of the council to serve as the chairperson or shall require the council to do so. Any member of the council who is a representative of the lead agency may not serve as the chairperson of the council.

a. *Duties.* The council shall advise and assist the lead agency in:

(1) Development and implementation of policies and programs that constitute the statewide system;

(2) Achieving the full participation, coordination and cooperation of all appropriate public agencies in the state that are providing early intervention services or otherwise contributing to the Early ACCESS system;

(3) Effective implementation of the statewide system by establishing a process that includes:

1. Seeking information from service providers, service coordinators, parents and others regarding any federal, state or local policies that impede timely service delivery; and

2. Taking steps to ensure that any policy issues are resolved;

(4) To the extent appropriate, resolution of disputes;

(5) Assignment of financial responsibility to the appropriate agency;

(6) Promotion of interagency agreements;

(7) Preparation of Part C applications and amendments to those applications;

(8) Transition of eligible children for preschool services under Part B of IDEA and rule 281—41.75(256B,34CFR300,303);

(9) Preparation and submission of an annual report to the governor and the U.S. Secretary of Education on the status of the Early ACCESS system of early intervention programs and services;

(10) Provision of appropriate services for children from birth to the age of five years, inclusive; and

(11) Identification of sources of fiscal and other support for services for early intervention programs. [34 CFR 303.600, 303.650-303.654]

The council may advise appropriate agencies in the state with respect to the integration of services for eligible children and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the state.

b. *Composition of the council.* The council shall be composed as follows:

(1) At least 20 percent shall be parents, including minority parents, of eligible children or children 12 years of age or younger with a condition or developmental delay, with knowledge of, or experience with, programs for infants and toddlers with a condition or developmental delay. At least one member must be a parent of an infant, toddler, or child 6 years of age or younger with a disability;

(2) At least 20 percent of the members shall be public or private providers of early intervention services;

(3) At least one member shall be from the state legislature;

(4) At least one member shall be involved in personnel preparation;

(5) At least one member shall be from a Head Start or Early Head Start agency or program in the state;

(6) At least one member shall be from each of the state agencies that are involved in the provision of, or payment for, early intervention services to eligible children and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of the signatory agencies;

(7) At least one member shall be from the state educational agency responsible for preschool services to children with a condition or developmental delay who has sufficient authority to engage in policy planning and implementation on behalf of that agency;

(8) At least one member shall be from the agency responsible for the state governance of health insurance; and

(9) Other members may be selected by the governor, including a representative from the Bureau of Indian Affairs (BIA) or, where there is no school operated or funded by the BIA, from the Indian health services or the tribe or tribal council. [34 CFR 303.601]

c. Council meetings. The council must:

(1) Meet at least quarterly in such locations as it deems necessary;

(2) Publicly announce the meetings sufficiently in advance of the dates the meetings are to be held to ensure that all interested parties have an opportunity to attend;

(3) To the extent appropriate, hold meetings that are open and accessible to the general public; and

(4) Provide interpreters for persons who are deaf attending council meetings. In addition, other special accommodations for both council members and participants who give advance notice of their needs to staff of the council shall be provided as appropriate at council meetings. [34 CFR 303.603]

d. Conflict of interest. No member of the council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest. [34 CFR 303.604]

e. Executive committee. The executive committee shall consist of the council chairperson; the vice-chairperson; at least two council members, one of whom is a parent; and a council representative from each of the signatory agencies. The executive committee is responsible for the following:

(1) Initially reviewing and discussing information and issues that will be addressed by the full council;

(2) Establishing the framework for overall council business, including the calendar of meetings and the agenda for council meetings; and

(3) Facilitating the implementation of the interagency agreement among the signatory agencies described in subrule 120.7(4).

120.7(4) Signatory agencies. The departments of education, public health, and human services and the child health specialty clinics shall enter into an interagency agreement to formalize their joint commitments to the establishment and ongoing implementation and evaluation of a comprehensive, integrated, interagency Early ACCESS system. The Iowa department of education is responsible for providing education programs and services for preschool and school-age students, including children with disabilities, from birth through 21 years of age. The Iowa department of human services administers social service programs in order to help and empower individuals and families to become increasingly self-sufficient and productive. The Iowa department of public health administers public health programs in order to promote and protect the health of Iowans. The child health specialty clinics are the statewide public health program for children with special health care needs, as designated by the legislature. [34 CFR 303.523; 20 U.S.C. 1411, 1419(a),(h), 1432(4)(B), 1435(a)(10)]

120.7(5) Interagency agreement. The agreement between signatory agencies shall outline the commitment of these agencies to the implementation of an interagency, integrated system of Early ACCESS and:

a. Reflect the interagency vision and guiding principles of Early ACCESS;

b. Define the population to be served;

c. Identify roles, responsibilities and expectations of the signatory agencies;

d. Outline financial responsibilities described in rule 281—120.79(34CFR303);

e. Describe parameters for policy development and management decisions;

f. Describe procedures for resolving disputes;

g. Identify transition activities from Part C services;

h. Describe child find efforts; and

i. Describe the roles and responsibilities of the signatory agencies and assigned staff. [34 CFR 303.523]

281—120.8(34CFR303) Early ACCESS system—regional and community levels.

120.8(1) Early ACCESS grantees. Early ACCESS grantees shall have the fiscal and legal obligation for ensuring that the Early ACCESS system is carried out regionally. Early ACCESS grantees shall be designated by the lead agency, and shall exist, at a minimum, in geographic areas that ensure statewide coverage as determined by the lead agency.

a. Policies. Each grantee shall establish in accordance with these rules the policies pertinent to a regional Early ACCESS system and shall make such policies available to the lead agency upon request. At a minimum, such policies shall include the following:

(1) Policy to ensure that appropriate early intervention services are available to all eligible children in the state and their families, including Indian infants and toddlers and their families residing on a reservation or settlement geographically located in the state, in accordance with rule 281—120.23(34CFR303);

(2) Policy to ensure that all infants and toddlers in the state who are eligible for services under these rules are identified, located, and evaluated, and that an effective method to determine which children are receiving needed early intervention services is developed and implemented, in accordance with rule 281—120.23(34CFR303);

(3) Policy regarding the development and implementation of individualized family service plans, in accordance with division VII;

(4) Policy for the establishment and maintenance of standards to ensure that personnel necessary to carry out the requirements of these rules are appropriately and adequately prepared and trained, in accordance with division V;

(5) Policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services and service coordination, in accordance with rule 281—120.83(34CFR303); and

(6) Policy to ensure a smooth transition to preschool or other appropriate services for children receiving early intervention services under these rules, in accordance with division VIII.

b. Procedures. Each grantee shall develop, in accordance with these rules, written procedures pertinent to the implementation of a regional Early ACCESS system, and shall make such procedures available to the lead agency upon request. At a minimum, such procedures shall include the following:

(1) Procedures to ensure that all infants and toddlers who are eligible for services under these rules are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented, in accordance with rule 281—120.23(34CFR303);

(2) Procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for evaluation and assessment or, as appropriate, the provision of services, in accordance with subrule 120.27(2);

(3) Procedures to ensure provision of early intervention services and service coordination, including the appointment of service coordinators, in accordance with subrule 120.27(2);

(4) Procedures to ensure documentation and the development and implementation of an interim IFSP in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 days, in accordance with rule 281—120.30(34CFR303);

(5) Procedures for conducting nondiscriminatory evaluation and assessment, in accordance with rule 281—120.28(34CFR303);

(6) Procedures for the development and implementation of individualized family service plans, in accordance with division VII;

(7) Procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of these rules are appropriately and adequately prepared and trained, in accordance with division V;

(8) Procedures for ensuring procedural safeguards that meet the requirements of these rules, in accordance with division IX;

(9) Procedures for ensuring maintenance and confidentiality of records, as described in rules 281—120.42(34CFR303) and 281—120.65(34CFR303);

(10) Procedures to allow parties to disputes to resolve the disputes through a mediation process, in accordance with rule 281—120.70(34CFR303);

(11) Procedures for providing mediation for the timely administrative resolution of complaints by parents regarding an individual child, in accordance with subrules 120.69(4) and 120.71(1);

(12) Procedures for resolving a complaint that any public agency is violating a requirement of Part C, in accordance with paragraph 120.69(1)“a”;

(13) Procedures related to how services to eligible children and their families will be paid for under the state’s early intervention program, in accordance with division XI;

(14) Procedures for the timely provision of services, ensuring that no service to which a child is entitled is delayed or denied because of disputes between agencies regarding financial or other responsibilities, in accordance with subrule 120.83(1);

(15) Procedures for resolving intra-agency and interagency disputes about payments for a given service or about other matters related to the state’s early intervention program in accordance with inter-agency agreement(s) and with rule 281—120.79(34CFR303);

(16) Procedures to ensure that services are provided to eligible children and their families in a timely manner pending the resolution of disputes among public agencies or service providers, in accordance with subrule 120.71(7); and

(17) Procedures for securing the timely reimbursement of funds, in accordance with rule 281—120.84(34CFR303).

c. Collaboration. Early ACCESS grantees shall collaborate with local representatives of signatory agencies, community partners, and families in the development, implementation and monitoring of policies and procedures described in this rule. Early ACCESS grantees shall designate an individual who has primary responsibility for coordinating regional implementation and serving as a liaison to the lead agency.

120.8(2) Community partners. Community partners include state and local representatives of signatory agencies, as well as other regional and community agencies and providers, public and private, including physicians, Early Head Start, child care providers, community empowerment areas, and health programs, that work with Early ACCESS when providing early intervention services or other supports such as supporting family participation in improving the Early ACCESS system, early identification of eligible children, service coordination, provision of other needed services or resources, and other efforts to improve the Early ACCESS system. [34 CFR 303.522]

281—120.9 to 120.11 Reserved.

DIVISION IV SERVICES AVAILABLE TO ELIGIBLE CHILDREN

281—120.12(34CFR303) Early intervention services. Early intervention services means services that:

1. Are provided under public supervision by qualified personnel at no cost to families; [34 CFR 303.12(a)(3)]

2. Are designed to meet:

- The developmental needs of eligible children, and
- The needs of the family related to enhancing the child’s development; [34 CFR 303.12(a)(1)]

3. Are selected in collaboration with the parents; [34 CFR 303.12(a)(2)]
4. Meet the standards of the state, including the requirements of this chapter; [34 CFR 303.12(a)(4)]
5. Are subject to the exclusions on health services as defined in paragraph 120.14(5)“b”; and
6. Are provided in conformity with an individualized family service plan. [34 CFR 303.12(a)(3)(iii)]

281—120.13(34CFR303) Services in natural environment. To the maximum extent appropriate to the needs of the eligible child, early intervention services are to be provided in a natural environment. “Natural environment” means settings that are natural or normal for an eligible child’s age peers who have no disabilities. Natural settings also include home and community settings in which children without disabilities participate. [34 CFR 303.12(b); 303.18; 303.344(d)(1)(ii)]

120.13(1) *Setting other than natural environment.* The provision of early intervention services for each eligible child may occur in a setting other than a natural environment only if the IFSP team, based on the evaluation and assessment conducted and the provisions of the IFSP, determines that early intervention cannot be achieved satisfactorily for the child in a natural environment. [34 CFR 303.344(d)(1)(ii)]

120.13(2) *Exceptions.* The provisions on natural environments do not apply to services listed in an IFSP that are intended to meet the needs of a parent or other family member and not the needs of the child, such as participation of a parent in a parent support program. [34 CFR 303.341(d)]

281—120.14(34CFR303) Types of early intervention services. Intervention includes the following types of services:

120.14(1) “Assistive technology device” means any item, piece of equipment or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children eligible for Early ACCESS. [34 CFR 303.12(d)(1)]

120.14(2) “Assistive technology service” means a service that directly assists an eligible child or the child’s parent in the selection, acquisition, or use of an assistive technology device for the child. Assistive technology services include:

- a. The evaluation of the needs of an eligible child including a functional evaluation of the child in the child’s customary environment;
- b. Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by an eligible child;
- c. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- d. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- e. Training or technical assistance for an eligible child or, if appropriate, for the child’s family; and
- f. Training or technical assistance for professionals, including individuals providing early intervention services, or other individuals who provide services to or are otherwise substantially involved in the major life functions of an eligible child. [34 CFR 303.12(d)(1)(i-vi)]

120.14(3) “Audiology services” include:

- a. Identification of children with auditory impairment, using at-risk criteria and appropriate audiologic screening techniques;
- b. Determination of the range, nature and degree of hearing loss and communication functions by use of audiologic evaluation procedures;

c. Referral for medical and other services necessary for the habilitation or rehabilitation of children with hearing loss;

d. Provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

e. Provision of services for prevention of hearing loss; and

f. Determination of a child's need for individual amplification, including selecting, fitting and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices. [34 CFR 303.12(d)(2)]

120.14(4) "Family training, counseling and home visits" means services provided by social workers, psychologists, special educators and other qualified personnel to assist the family of an eligible child in understanding the special needs of the child and enhancing the child's development. [34 CFR 303.12(d)(3)]

120.14(5) "Health services" means services necessary to enable a child to benefit from the other early intervention services under Early ACCESS during the time that the child is receiving the other early intervention services.

a. Health services include:

(1) Services such as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags and other health services;

(2) Consultation by physicians with other service providers concerning the special health care needs of an eligible child that need to be addressed in the course of providing other early intervention services.

b. Health services do not include the following:

(1) Services that are surgical in nature, such as cleft palate surgery, surgery for club foot, the shunting of hydrocephalus, or the installation of devices such as pacemakers, cochlear implants or prostheses;

(2) Services that are purely medical in nature, such as hospitalization for management of congenital heart ailments or the prescribing of medicine or drugs for any purpose;

(3) Devices necessary to control or treat a medical or other condition; or

(4) Medical-health services, such as immunizations and periodic well-child exams that are routinely recommended for all children. [34 CFR 303.12(d)(4); 303.13]

120.14(6) "Medical services only for diagnostic or evaluation purposes" means services to determine a child's developmental status and need for early intervention services which are provided by a licensed physician, physician's assistant, advanced registered nurse practitioner, or other licensed health care provider if such services are within the provider's scope of practice as provided in Iowa law. [34 CFR 303.12(d)(5)]

120.14(7) "Nursing services" include:

a. The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

b. Provision of nursing care to prevent health problems, restore or improve functioning and promote optimal health and development; and

c. Administration of medications, treatments and regimens prescribed by a licensed physician. [34 CFR 303.12(d)(6)]

120.14(8) "Nutrition services" include:

a. Conducting individual assessments of:

(1) Nutritional history and dietary intake;

(2) Anthropometric, biochemical, and clinical variables;

(3) Feeding skills and feeding problems; and

(4) Food habits and food preferences;

b. Developing and monitoring appropriate plans to address the nutritional needs of an eligible child; and

c. Making referrals to appropriate community resources to carry out nutrition goals. [34 CFR 303.12(d)(7)]

120.14(9) “Occupational therapy” includes services to address the functional needs of a child related to adaptive development; adaptive behavior and play; and sensory, motor, and postural development. These services are designed to improve the child’s functional ability to perform tasks in home, school and community settings, and include:

a. Identification, assessment and intervention;

b. Adaptation of the environment and selection, design and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

c. Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability. [34 CFR 303.12(d)(8)]

120.14(10) “Physical therapy” includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status and effective environmental adaptation. These services include:

a. Screening, evaluation and assessment of eligible children from birth to the age of three to identify movement dysfunction;

b. Obtaining, interpreting and integrating information appropriate to program planning to prevent, alleviate or compensate for movement dysfunction and related functional problems; and

c. Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems. [34 CFR 303.12(d)(9)]

120.14(11) “Psychological services” include:

a. Administering psychological and developmental tests and other assessment procedures;

b. Interpreting assessment results;

c. Obtaining, integrating and interpreting information about child behavior and about child and family conditions related to learning, mental health and development; and

d. Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, and parent education programs. [34 CFR 303.12(d)(10)]

120.14(12) “Social work services” include:

a. Making home visits to evaluate a child’s living conditions and patterns of parent-child interaction;

b. Preparing a social or emotional developmental assessment of the child within the family context;

c. Providing individual and family-group counseling with parents and other family members and appropriate social skill-building activities with the child and parent(s);

d. Working with those problems in a child’s and family’s living situation, including in the home, in the community and at any center where early intervention services are provided, that affect the child’s maximum utilization of early intervention services; and

e. Identifying, mobilizing and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services. [34 CFR 303.12(d)(12)]

120.14(13) “Special instruction” includes:

- a.* The design of learning environments and activities that promote the child’s acquisition of skills in the following developmental areas: cognitive, physical including vision and hearing, communication, social or emotional, and adaptive;
- b.* Planning that leads to achieving the outcomes in the child’s IFSP, including curriculum planning, the planned interaction of personnel and planning with respect to the appropriate use of time, space and materials;
- c.* Providing families with information, skills and support related to enhancing the skill development of the child; and
- d.* Working with the child to enhance the child’s development. [34 CFR 303.12(d)(13)]

120.14(14) “Speech-language pathology services” include:

- a.* Identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;
- b.* Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or swallowing disorders and delays in development of communication skills;
- c.* Provision of services for the habilitation, rehabilitation or prevention of communicative or swallowing disorders and delays in development of communication skills; and
- d.* Counseling and guidance of parents, children and teachers regarding speech and language impairments. [34 CFR 303.12(d)(14)]

120.14(15) “Transportation and other related costs” includes the cost of travel, such as mileage or travel by taxi, common carrier or other means, and related costs, such as tolls and parking expenses, that are necessary to enable an eligible child and the child’s family to receive early intervention services. [34 CFR 303.12(d)(15)]

120.14(16) “Vision services” means:

- a.* Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;
- b.* Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and
- c.* Communication skills training, orientation and mobility training for all environments, visual training, independent living skills training and additional training necessary to activate visual motor abilities. [34 CFR 303.12(d)(16)]

281—120.15(34CFR303) Service coordination.

120.15(1) *Access to service coordination.* To address each child’s and family’s unique needs within an integrated system of services, the child and family must be able to access service coordination. Service coordination must be available to assist and enable an eligible child and the child’s family to receive the rights, procedural safeguards, and services that are authorized to be provided under these rules. Service coordination is an ongoing process designed to facilitate and enhance the delivery of early intervention services. [34 CFR 303.23]

120.15(2) *Interagency system of service coordination.* The signatory agencies and community partners shall work with families to support an effective system of service coordination consistent with these rules. [34 CFR 303.23(a)-(c)]

120.15(3) *Service coordinator.* Each eligible child and the child's family must be provided with one service coordinator who is responsible for coordinating all early intervention and other services identified on the IFSP across agencies and for serving as the single point of contact in helping parents obtain the services and assistance that the parents need. The service coordinator shall be a partner with each family in continuously seeking the appropriate services, resources and supports necessary to benefit the development of each child being served for the duration of the child's eligibility. The service coordinator also shall assist the family in accessing early intervention services and resources from a variety of formal and informal community agencies or providers. The service coordinator shall facilitate communication among early intervention service providers across agencies, resulting in a more coordinated and responsive delivery system. [34 CFR 303.23(a)]

120.15(4) *Who can be a service coordinator.* Service coordinators shall meet the qualifications found in subrule 120.19(8) and may be from any of the signatory agencies, or Early ACCESS grantees, or may be individuals or agencies who have a contract, memorandum of understanding, or memorandum of agreement with grantees.

120.15(5) *Responsibilities of service coordinator.* Minimum responsibilities of interagency service coordinators include:

- a. Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the IFSP;
- b. Facilitating the timely delivery of available services;
- c. Using family-centered practices in all contacts with families;
- d. Explaining the system of services and resources called Early ACCESS;
- e. Assisting families in identifying and accessing available resources and services needed, and actions to meet needs;
- f. Coordinating the performance of evaluations and assessments;
- g. Informing families of the availability of advocacy services and explaining family rights;
- h. Facilitating and participating in the development, review and evaluation of IFSPs;
- i. Coordinating with medical and health providers;
- j. Coordinating and monitoring the delivery of available services;
- k. Managing the case file, including the IFSP and all necessary related information and reports;
- l. Providing necessary information at formal periodic reviews and annual evaluations of the IFSP; and
- m. Facilitating the development of a transition plan in accordance with division VIII of these rules. [CFR 303.23(a),(b)]

120.15(6) *Appointment of service coordinator.* An appointed service coordinator shall be assigned to families as soon as possible after a referral is received at the designated regional Early ACCESS point of contact for each geographic area. The service coordinator for a child and family may change following determination of eligibility and development of the IFSP, based on the needs of the child and family. Continuity of services for the child and family shall be a consideration in the determination of whether a change should be made in the service coordinator at any time following initial appointment. [34 CFR 303.23(c); 303.344(g)]

281—120.16 to 120.18 Reserved.

DIVISION V
PERSONNEL**281—120.19(34CFR303) Comprehensive system of personnel development (CSPD).**

120.19(1) Definitions. As used in this division:

“Highest requirements in the state applicable to a specific profession or discipline” means the highest entry-level academic degree needed for any state-approved or state-recognized certification, licensing, registration or other comparable requirements that apply to that profession or discipline. [34 CFR 303.361(a)(2)]

“Profession or discipline” means a specific occupational category that:

1. Provides early intervention services to eligible children and their families;
2. Has been established or designated by the state; and
3. Has a required scope of responsibility and degree of supervision. [34 CFR 303.361(a)(3)]

“State-approved or state-recognized certification, licensing, registration, or other comparable requirements” means the requirements that have been promulgated by the state to establish the entry-level standards for employment in a specific profession or discipline within the Early ACCESS system. [34 CFR 303.361(a)(4)]

120.19(2) CSPD. The signatory agencies shall support and implement an interagency comprehensive system of personnel development to ensure that there will be sufficient numbers of qualified and skilled providers of Early ACCESS supports and services. The system must provide for preservice and in-service training to be conducted on an interdisciplinary basis, to the extent appropriate. It must also provide for a variety of personnel needed to meet the needs of eligible children, including public and private providers, primary referral sources, paraprofessionals, and persons who will serve as service coordinators. The personnel development system may include:

- a. Implementing innovative strategies and activities for the recruitment and retention of early intervention service providers;
- b. Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services;
- c. Training personnel to work throughout the state; and
- d. Training personnel to coordinate transition services for eligible children from an early intervention program in Early ACCESS to a Part B preschool program or to other preschool or other appropriate services. [34 CFR 303.360(c)(1)-(4)]

120.19(3) Appropriate professional requirements. Entry-level requirements for qualified and skilled providers of Early ACCESS supports and services:

- a. Are based on the highest requirements in the state applicable to the profession or discipline in which a person is providing early intervention services; and
- b. Establish suitable qualifications for personnel providing early intervention services to eligible children and their families who are served by state, local and private agencies. [34 CFR 303.361(a)(1),(2)]

120.19(4) Qualified providers. Providers of early intervention services shall meet the certification and licensure requirements of the licensing body governing the type of support or service being provided as a part of the child’s IFSP. [34 CFR 303.22; 303.361(a)(4)]

120.19(5) Use of paraprofessionals and assistants. Paraprofessionals and assistants who are appropriately trained and supervised, in accordance with the highest standards within the state, may assist in the provision of early intervention services to eligible children. [34 CFR 303.361(f)]

120.19(6) Scope of training. The CSPD for the Early ACCESS system shall ensure that the training provided relates specifically to:

- a. Understanding the basic components of early intervention services available in the state;

b. Meeting the interrelated social or emotional, health, developmental and educational needs of eligible children; and

c. Assisting families in enhancing the development of their children and in participating fully in the development and implementation of IFSPs. [34 CFR 303.360(b)(4)]

120.19(7) *General role of service providers.* In addition to providing direct early intervention services as defined in division IV, to the extent appropriate, service providers for each area of early intervention shall be responsible for:

a. Consulting with parents, other service providers, and representatives of appropriate community agencies to ensure the effective provision of services in that area;

b. Training parents and others regarding the provision of those services; and

c. Participating in the multidisciplinary team's assessment of a child and the child's family, and in the development of integrated goals and outcomes for the IFSP. [34 CFR 303.12(c)]

120.19(8) *Qualifications of service coordinator.* A service coordinator must be a person who, in accordance with subrule 120.40(10), has completed a competency-based training program with content related to knowledge and understanding of eligible children, these rules, the nature and scope of services in Early ACCESS in the state, and the system of payments for services, as well as service coordination responsibilities and strategies. The competency-based training program, approved by the lead agency, shall include different training formats and differentiated training to reflect the background and knowledge of the trainees, including those persons who are state-licensed professionals whose scope of practice includes service coordination. The lead agency or its designee shall determine whether service coordinators have successfully completed the training. [34 CFR 303.23(d)]

281—120.20 to 120.22 Reserved.

DIVISION VI
IDENTIFICATION OF ELIGIBLE CHILDREN

281—120.23(34CFR303) *Child find system.* The signatory agencies, with the advice and assistance of the council, shall maintain and improve a comprehensive interagency child find system in all areas of the state, including urban and rural areas and Indian settlements or reservations, to ensure that all children from birth to the age of three years who may be eligible for Early ACCESS are identified, located and referred for evaluation.

281—120.24(34CFR303) *Public access to information and services.*

120.24(1) *Central directory.* The early intervention system must include a central directory of information regarding the following:

a. Public and private early intervention services, resources and experts available in the state;

b. Research and demonstration projects being conducted in the state; and

c. Professional and other groups, including parent support groups and advocate associations, that provide assistance to eligible children and their families.

Central directory information shall be listed so as to ensure that the general public will be able to determine the nature and scope of the services and assistance available from each of the sources listed in the directory. In addition, the central directory information shall enable a parent of an eligible child to contact, by telephone or letter, any of the sources listed in the directory. The central directory shall be updated at least annually and be accessible in the language of parents or other mode of communication to the general public in each geographic region of the state, including rural areas, and in places and in a manner that ensures accessibility by a person with a disability. [34 CFR 303.162; 303.301]

120.24(2) *Public awareness.* The public shall be made aware of the Early ACCESS system and of the need to identify, locate and evaluate all eligible children from birth to the age of three years so that early intervention supports and services can be provided to meet each child's needs and those of the child's family. Comprehensive public awareness activities shall be carried out by the signatory agencies. Public awareness shall involve communication with agencies and organizations in the state that have a direct interest in early intervention including private providers, professional associations, parent groups, advocacy associations and other organizations. Public awareness activities shall include ways to inform the public about the Early ACCESS system and the child find system, including:

- a.* The purpose and scope of the system;
- b.* How to make referrals;
- c.* How to gain access to comprehensive, multidisciplinary evaluation and early intervention services; and
- d.* The central directory of available early intervention services. [34 CFR 303.164; 303.320]

281—120.25 and 120.26 Reserved.

281—120.27(34CFR303) *Comprehensive identification procedures.* Comprehensive identification procedures, including screening, referral, multidisciplinary evaluation, family assessment, and eligibility determination procedures, shall be utilized across the regional programs provided by the signatory agencies and other community partners. When appropriate, all of the signatory agencies and the community partners shall participate in the evaluation of young children from birth to the age of three years, referred for early intervention services. Because the needs of infants and toddlers change so rapidly during the course of a year, certain evaluation procedures may need to be repeated before conducting the periodic reviews and annual evaluation meetings. [34 CFR 303.322(a)]

120.27(1) *Screening.* Screening is a brief procedure used by qualified individuals to determine a potential or suspected condition or delay in one or more areas of child growth and development. Screening results shall be used in determining the need for referral for further evaluation.

120.27(2) *Referral.* Referral is a systematic method or process of linking potentially eligible children to Early ACCESS for identification or further evaluation as needed. Referrals may either be verbal or in writing and must be made no more than two working days after a child has been identified by a primary referral source. Once a grantee or designee receives a referral for further screening or evaluation, a service coordinator must be appointed as soon as possible. Primary referral sources include:

- a.* Parents, families or other persons designated by a parent;
- b.* Other federally funded programs such as Head Start, Early Head Start and Even Start;
- c.* Hospitals or high-risk follow-up programs;
- d.* Physicians;
- e.* Advanced registered nurse practitioners;
- f.* Child care programs;
- g.* Local or area education agencies;
- h.* Public and private health providers;
- i.* Social service agencies; and
- j.* Other child-serving agencies, including those supported by community empowerment areas. [34 CFR 300.321(d)]

120.27(3) *Consent.* Written parental consent shall be obtained before evaluations are conducted, in accordance with rule 281—120.67(34CFR303). Parents have the right to refuse evaluations and assessments for their child. [34 CFR 303.404]

120.27(4) Evaluation. Multidisciplinary evaluation includes those procedures used by appropriate qualified personnel to determine a child's initial and continuing eligibility for Early ACCESS and to gather information for planning to address the needs of the child and the child's family. Evaluation shall be provided at no cost to parents. In addition, evaluation must:

- a. Be conducted by two or more personnel trained to utilize appropriate methods and procedures;
- b. Be based on informed clinical opinion; and
- c. Include the following:
 - (1) A review of existing data, including screening results, evaluations, and pertinent records related to the child's current health status and medical history;
 - (2) An evaluation of the child's level of functioning in developmental areas, including cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development; and
 - (3) An assessment of the unique needs of the child in the above-listed developmental areas. [34 CFR 303.322(b),(c); 303.521]

120.27(5) Family assessment. Family assessment must be family-directed, voluntary on the part of the family, and designed to determine the resources, priorities and concerns of the family and the identification of supports and services necessary to enhance the family's capacity to meet the developmental needs of the child. If an assessment of the family is carried out, the assessment must:

- a. Be conducted by personnel trained to utilize appropriate methods and procedures;
- b. Be based on information provided by the family through a personal interview; and
- c. Incorporate the family's description of its resources, priorities and concerns related to enhancing the child's development. [34 CFR 303.322(d)]

120.27(6) Determination of eligibility. The multidisciplinary IFSP team, described in rule 281—120.35(34CFR303), shall determine eligibility of children for early intervention services based on the definition of "eligible children" in rule 281—120.4(34CFR303). [34 CFR 303.300]

281—120.28(34CFR303) Nondiscriminatory procedures. All agencies shall use nondiscriminatory evaluation and assessment procedures. Public agencies responsible for the evaluation and assessment of children and families shall ensure, at a minimum, that:

1. Tests and other evaluation materials and procedures are administered in the native language of a parent or child or other mode of communication, unless it is clearly not feasible to do so;
2. Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;
3. No single procedure is used as the sole criterion for determining a child's eligibility for Early ACCESS; and
4. Evaluations and assessments are conducted by qualified personnel. [34 CFR 303.323]

281—120.29(34CFR303) Services prior to completion of evaluation and family assessment. Early intervention services may commence before the completion of the evaluation and family assessment in order to facilitate the provision of services in the event that a child may have obvious immediate needs and if the following conditions are met:

1. Parental consent is obtained;
2. An interim IFSP is developed that includes:
 - The name of the service coordinator who shall be responsible for the facilitation of its implementation and for coordination with other persons and agencies.
 - Early intervention services that have been determined to be needed immediately by the child and the child's family at the time of referral; and
3. The requirements for the timely evaluation and family assessment are not circumvented. [34 CFR 303.345]

281—120.30(34CFR303) Required timeline. The process of evaluation, family assessment and the development of an IFSP must be completed within 45 calendar days following receipt of a verbal or written referral for evaluation. If there are exceptional circumstances, such as the child's being ill, that make it impossible to complete the evaluation and assessment activities within the 45 days, these circumstances must be documented and, to the extent possible, an interim IFSP, described in rule 281—120.29(34CFR303), shall be developed and implemented. [34 CFR 303.322(e)]

281—120.31 to 120.33 Reserved.

DIVISION VII
INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

281—120.34(34CFR303) IFSP process. The goal of the IFSP process is to empower families with the resources, skills, and processes to meet the needs of the eligible child and the family in order to enhance the child's growth and development. The IFSP is written in collaboration with the family and may be modified based on the changing needs of the child and the family in accordance with division VII and division VIII of these rules. Parents and families shall be continually involved in all aspects of the identification, evaluation and assessment; IFSP planning, implementation, evaluation, review, and revision processes; and transition planning. For a child who has been evaluated for the first time and determined to be eligible, a meeting to develop the initial IFSP must be conducted within the 45-day time period indicated in rule 281—120.30(34CFR303). [34 CFR 303.340]

281—120.35(34CFR303) Participants at initial IFSP meeting. The initial IFSP meeting must include:

1. A parent of the child;
2. Other family members as requested by a parent, if feasible;
3. An advocate or person outside the family, if a parent requests that the person participate;
4. The service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by Early ACCESS to be responsible for implementation of the IFSP;
5. A person or persons directly involved in conducting the evaluations and assessment;
6. Persons who may be providing services to the child and family as appropriate; and
7. A primary health care provider or designee, if feasible. [34 CFR 303.343]

281—120.36(34CFR303) Alternate methods of involvement. The participation of a person who has been directly involved in conducting evaluations, assessments, or medical diagnoses and who is unable to attend the initial IFSP meeting or periodic review may be achieved through a variety of means including:

1. Participation in a conference call;
2. Making pertinent records available at the meeting; or
3. Having a person who is qualified to interpret the evaluation and assessment results and their service implications attend the meeting. This person could be one of the participants described in rule 281—120.35(34CFR303). [34 CFR 303.343(a)(2)]

281—120.37(34CFR303) IFSP meeting notice. Meeting arrangements shall be made with, and written notice provided to, the family and other participants in advance of the meeting date to ensure that the parties will be able to attend. [34 CFR 303.342(d)(2)]

281—120.38(34CFR303) Accessibility and convenience of meetings. IFSP meetings must be conducted:

1. In settings and at times that are convenient to families; and
2. In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. [34 CFR 303.342(d)(1)]

281—120.39(34CFR303) Interagency service planning. An IFSP process shall be developed by the lead agency and shall be reviewed and approved by the signatory agencies. The process shall be used by all signatory agencies to document the ongoing work between families and providers across all agencies that are providing a service or resource to meet identified needs.

281—120.40(34CFR303) Content of the IFSP.

120.40(1) *Developmental status of the child.* The IFSP shall include a statement of the child's present levels of physical development including vision, hearing and health status; cognitive development; communication development; social or emotional development; and adaptive development. The status of each area shall be based on professionally acceptable objective criteria and information provided by the family. [34 CFR 303.344(a)]

120.40(2) *Priorities and concerns of the family.* With the concurrence of the family, the IFSP shall include a statement of the family's resources, priorities and concerns related to enhancing the development of the child and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child. [34 CFR 303.344(b)]

120.40(3) *Desired outcomes.* The IFSP must contain a statement of the major outcomes expected to be achieved for the child and the child's family and the procedures, strategies, criteria and timelines used to determine progress toward achieving the outcomes and whether modifications or revisions of outcomes or services are necessary. [34 CFR 303.344(c)]

120.40(4) *Early intervention services.* The IFSP must include a statement of the specific early intervention services necessary to meet the unique needs of the child and the family and to achieve the outcomes specified within the IFSP. [34 CFR 303.344(d)(1)]

120.40(5) *Frequency, intensity, method, and location.* The IFSP must specify the following about the early intervention supports and services to be provided:

a. Frequency and intensity. Number of days or sessions that a service will be provided, the length of time the service is provided during each session, and whether the service is provided on an individual or group basis;

b. Method. How a service is provided; and

c. Location. The actual place or places where a service will be provided. [34 CFR 303.344(d)(1)]

120.40(6) *Statement of natural environments.* The IFSP shall contain a statement of the natural environments in which early intervention services shall be provided as described in rule 281—120.13(34CFR303). [34 CFR 303.344(d)(1)(ii)]

120.40(7) *Justification for other setting in IFSP.* For each early intervention service to be provided to the child, the IFSP team shall determine if the child's needs are being met in a natural environment. If the team determines that a specific service for the child must be provided in a setting other than a natural environment, such as a center-based program that serves children with disabilities or another setting appropriate to the age and needs of the child, a justification must be included in the child's IFSP. [34 CFR 303.344(d)(1)(ii)]

120.40(8) *Payment arrangements.* The IFSP must include a statement of the payment arrangements, if any, for each early intervention service, as described in division XI. [34 CFR 303.344(d)(1)(iv)]

120.40(9) *Dates and duration of services.* The date of initiation of services as soon as possible after the IFSP meeting and the projected duration of services shall be listed in the IFSP. [34 CFR 303.344(f)]

120.40(10) *Service coordinator.* The IFSP must include the name of the service coordinator from the profession most immediately relevant to the needs of the child or family, or the name of the person who is otherwise qualified to carry out service coordination functions, who shall be responsible for facilitating the implementation of the IFSP and coordination with other agencies and persons, as described in subrules 120.15(5) and 120.15(6). [34 CFR 303.344(g)]

120.40(11) *Transition at the age of three years.* To the extent appropriate, the IFSP shall address the transition of the child to early childhood special education, preschool, or other appropriate services. The IFSP must address the steps to be taken to support the transition of the child, as described in division VIII. [34 CFR 303.344(h)]

120.40(12) *Other services.* To the extent appropriate, the IFSP must include:

a. Medical and other services that the child needs, but that are not required under Early ACCESS, and

b. The funding sources to be used in paying for these services or the steps that will be taken to secure these services through public or private services.

The requirements of this subrule apply to routine medical services, such as immunizations and well-child care, when a child needs those services and the services are not otherwise available or being provided. [34 CFR 303.344(e), Note 3]

281—120.41(34CFR303) *Parental consent before providing services.* The contents of the IFSP must be fully explained to a parent and informed written consent from a parent must be obtained prior to the provision of early intervention services described in the IFSP. If a parent does not provide consent with respect to a particular early intervention service or withdraws consent after first providing it, that service shall not be provided. The early intervention services for which parental consent is obtained must be provided. [34 CFR 300.342(e)]

281—120.42(34CFR303) *Maintenance of records.* The official copy of the IFSP shall be maintained by the regional Early ACCESS grantee, and a copy shall be provided to a parent, the service coordinator, and service providers specified within the IFSP.

281—120.43(34CFR303) *Provision of year-round services.* The Early ACCESS grantee shall ensure that Early ACCESS components and services are available 12 months a year to meet the needs of the eligible child and family.

281—120.44(34CFR303) *Responsibility and accountability for IFSPs.* Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, such agency or person shall not be held accountable if an eligible child does not achieve the growth projected in the child's IFSP. [34 CFR 303.346]

281—120.45 and 120.46 Reserved.

281—120.47(34CFR303) Assessments. Interagency assessment of each child served within the Early ACCESS system shall include ongoing procedures used by qualified personnel throughout the period of a child's eligibility. The purpose of ongoing assessment is to identify the child's unique strengths and needs and the services appropriate to meet those needs. In addition, resources, priorities and concerns of the family and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child shall be included within ongoing assessment. Periodic or ongoing assessment will determine the degree to which progress is being made by the child and family toward achieving the desired outcomes and whether modifications or revision of the outcomes or service is necessary. Verbal or written feedback shall be provided to parents regarding ongoing assessment of their child. [34 CFR 303.322(b)(2)]

281—120.48(34CFR303) Periodic review. At least every six months, or more frequently if conditions warrant or if the family requests such a review, a periodic review of the IFSP must be held to determine the degree to which progress toward achieving the outcomes is being made and whether modification or revision of the outcomes or services is necessary. Periodic reviews may be carried out by a meeting or by another means that is acceptable to a parent and other participants, such as a conference call. [34 CFR 303.342(b)]

281—120.49(34CFR303) Periodic review team. Participants in the periodic review shall include:

1. Parent or parents of the child;
2. Other family members as requested by a parent, if feasible to do so;
3. An advocate or person outside the family, if the family requests;
4. The designated service coordinator who has been working with the family since the initial referral of the child for evaluation, or who has been designated by the grantee or designee to be responsible for implementation of the IFSP.
5. If conditions warrant, the periodic review team shall include the participation of:
 - A person or persons directly involved in conducting the evaluations and assessments;
 - As appropriate, persons who will be providing services to the child or family; or
 - A primary health care provider or designee. [34 CFR 303.343]

281—120.50(34CFR303) Annual review. A meeting must be conducted at least annually to evaluate the IFSP and revise its provisions, as appropriate. The results of any current evaluations and other information available from ongoing assessments of the child and family shall be used to determine any changes in the provisions of the IFSP. [34 CFR 303.342(c)]

281—120.51(34CFR303) Annual review team participants. The annual meeting to evaluate the IFSP must include those participants identified at rule 281—120.35(34CFR303).

281—120.52(34CFR303) Alternative methods of involvement. When a person who has been directly involved in conducting evaluations or assessments is unable to attend initial IFSP meetings, periodic reviews or annual IFSP meetings, alternative methods of involvement shall be used, as described in rule 281—120.36(34CFR303). [34 CFR 303.343(a)(2)]

281—120.53 to 120.55 Reserved.

DIVISION VIII
TRANSITION

281—120.56(34CFR303) Transition process. All children receiving services under Early ACCESS shall have a smooth transition when exiting from Early ACCESS. There shall be continuity of services for children during the transition process. Families shall be involved throughout the transition process for their child. [34 CFR 303.148]

281—120.57(34CFR303) Transition plan and continuity of services. The IFSP must contain steps to be taken to support the transition of the child from early intervention services to preschool services under Part B or to other services that are available. These steps include, but are not limited to:

1. Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;
2. Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting; and
3. With written parental consent, the transmission of information about the child to the local education agency or other relevant agency to ensure continuity of services including evaluation and assessment, and information and copies of IFSPs that have been developed and implemented in accordance with division VII. [34 CFR 303.344(h)]

A transition plan shall be developed that includes the child's program options for the period from the child's third birthday through the remainder of the school year, and the preschool or other services to be provided following the child's third birthday. [34 CFR 303.148]

281—120.58(34CFR303) Family involvement and notification of the local education agency. The signatory agencies shall have policies explaining how families of children will be included in the transition planning for their children. In addition, there shall be policies explaining how the grantee will notify local education agencies in the area that an eligible child resides that the child will shortly reach the age of eligibility for preschool services under Part B of IDEA. Parents shall be involved in such notification. [34 CFR 303.148(a),(b)]

281—120.59(34CFR303) Transmittal of records. In order to facilitate the child's smooth transition to preschool or other appropriate services and to ensure continuity of services for the child, the applicable signatory agency or community partner must obtain written parental consent prior to transmitting any records of the child to the local education agency or other applicable agency or program, unless the records are education records and the disclosure is authorized without parental consent under 34 CFR Part 99. Records that may be transmitted include:

1. Evaluation and assessment information.
2. Copies of IFSPs that have been developed and implemented. [34 CFR 303.344(h)(2)(iii)]

281—120.60(34CFR303) Transition planning for students not eligible for Part B preschool services. In the case of a child who may not be eligible for preschool services under Part B, with the approval of a parent of the child, the Early ACCESS service coordinator, a parent and appropriate service providers who may have been or potentially may be serving the child and family shall make reasonable efforts to convene a conference among the lead agency, or grantee designee, and providers of other appropriate services for the purpose of discussing the appropriate services that the child may need. [34 CFR 303.148(b)(2)(ii)]

281—120.61(34CFR303) Transition planning for students eligible for Part B preschool services.

In the case of a child who may be eligible for preschool services under Part B, with the approval of a parent of the child, a conference shall be convened among the lead agency or grantee designee, the service coordinator, the family, the local education agency, and providers of other appropriate services at least 90 days and, at the discretion of the parties, up to 6 months before the child transitions to preschool services to discuss any services that the child may receive. [34 CFR 303.148(b)(2)(i)]

281—120.62 to 120.64 Reserved.

DIVISION IX
PROCEDURAL SAFEGUARDS

281—120.65(34CFR303) Records.

120.65(1) Confidentiality of information. Consistent with federal and state law, grantees shall adopt and implement policies and procedures to ensure the protection of any personally identifiable information collected, used, or maintained under these rules, including the right of parents to written notice of and written consent to the exchange of this information among agencies. These policies and procedures must meet the requirements in 34 CFR 300.560 through 300.576. [34 CFR 303.460]

120.65(2) Parental access to records. A parent of an eligible child shall be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determination, development and implementation of IFSPs, individual complaints dealing with the child, and provision of any other activity or process described in these rules involving records concerning the child and family. [34 CFR 303.402]

281—120.66(34CFR303) Prior written notice.

120.66(1) Service coordinator ensures timely notice. Under the direction of any grantee, agency, public provider or private provider, the service coordinator shall ensure that adequate written prior notice is provided to the parents within a reasonable time before a public agency or service provider proposes or refuses to initiate or change the identification, evaluation or placement of the child or the provision of appropriate early intervention services to the child and the child's family. [34 CFR 303.403(a)]

120.66(2) Content of notice. The notice shall contain information in sufficient detail to inform a parent about:

- a. The action that is being proposed or refused;
- b. The reasons for taking the action;
- c. All procedural safeguards that are available under this division for the child and family; and
- d. The state complaint procedures, described in rule 281—120.69(34CFR303), including a description of how to file a complaint and the timelines under those procedures. [34 CFR 303.403(b)]

120.66(3) Native language.

- a. The notice must be:
 - (1) Written in language understandable to the general public; and
 - (2) Provided in the native language of the parents, unless it is clearly not feasible to do so.
- b. If the native language or other mode of communication of the parent is not a written language, the service coordinator shall take steps to ensure that:
 - (1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (2) The parent understands the notice; and
 - (3) There is written evidence that these notice requirements have been met.

c. If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (such as sign language, Braille or oral communication). [34 CFR 303.403(c)]

281—120.67(34CFR303) Parental consent.

120.67(1) *Consent.* “Consent” means that:

a. The parent has been fully informed in the parent’s native language or other mode of communication of all information relevant to the activity for which consent is sought;

b. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom the records will be released; and

c. The parent understands that the granting of consent is voluntary on the part of the parent, and may be revoked at any time. [34 CFR 303.401(a)(1)-(3)]

120.67(2) *Parental consent required.* Written parental consent shall be obtained before:

a. Conducting the initial evaluation and assessment, as defined in subrule 120.27(4); and

b. Initiating the provision of early intervention services. [34 CFR 303.404(a)]

120.67(3) *Consent not given.* If consent is not given, the grantee shall make reasonable efforts to ensure that a parent:

a. Is fully aware of the nature of the evaluation or assessment or the services that are available; and

b. Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given.

A grantee may initiate procedures to challenge a parent’s refusal to consent to the initial evaluation of the parent’s child and, if successful, obtain the evaluation. [34 CFR 303.404(b), Note 2; 34 CFR 300.505(b)]

281—120.68(34CFR303) Surrogate parents.

120.68(1) *Conditions when a surrogate is needed.* The grantee shall ensure that the rights of an eligible child are protected if no parent can be identified; the grantee, after reasonable efforts, cannot discover the whereabouts of a parent; or the child is a ward of the state. The duty of the grantee shall include the assignment of an individual to act as a surrogate for the parent. This shall include a method for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. [34 CFR 303.406(a),(b)]

120.68(2) *Criteria for selecting surrogates.* The grantee shall ensure that a person selected as a surrogate parent:

a. Has no interest that would conflict with the interest of the child that the surrogate parent represents;

b. Has knowledge and skills that ensure adequate representation of the child; and

c. Not be an employee of any state agency or a person or an employee providing early intervention services to the child or to any family members of the child. A person who otherwise qualifies to be a surrogate parent is not an employee solely because the person is paid by a public agency to serve as a surrogate parent. [34 CFR 303.406(c),(d)]

120.68(3) *Responsibilities.* A surrogate parent may represent a child in all matters related to the evaluation and assessment of the child; development and implementation of the eligible child’s IFSP, including annual evaluations and periodic reviews; the ongoing provision of early intervention services to the eligible child; and any other rights established in these rules. [34 CFR 303.406(e)]

281—120.69(34CFR303) Complaints.

120.69(1) General. The lead agency shall adopt written procedures for:

a. Resolving any complaint, including a complaint filed by an organization or individual from another state, that any public agency or private service provider is violating a requirement of Part C of IDEA or of these rules;

b. Providing for the filing of a complaint with the lead agency or, at the lead agency's discretion, providing for the filing of a complaint with a public agency and the right to have the lead agency review the public agency's decision on the complaint; and

c. Widely disseminating the complaint procedures to parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers and other appropriate entities. [34 CFR 303.510(a)]

120.69(2) Remedies for denial of appropriate services. In resolving a complaint in which it finds a failure to provide appropriate services, the lead agency, pursuant to its general supervisor authority under Part C, must address:

a. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and

b. Appropriate future provision of services for eligible children and their families. [34 CFR 303.510(b)]

120.69(3) Procedures for filing complaint. An individual or organization may file a written signed complaint with the lead agency that includes a statement that the state has violated a requirement of Part C of IDEA or these rules and the facts on which the complaint is based. The alleged violation must have occurred not more than one year before the date that the complaint is received by the lead agency, unless a longer period is reasonable because the alleged violation continues for that child or other children, or the complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the formal complaint is received. [34 CFR 303.511]

120.69(4) Minimum state complaint procedures. There shall be a time limit of 60 calendar days after a formal complaint is filed with the lead agency in which the lead agency shall:

a. Carry out an independent on-site investigation, if the lead agency determines that an investigation is necessary;

b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

c. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of IDEA or these rules; and

d. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(1) Findings of fact and conclusions; and

(2) The reasons for the lead agency's final decision. [34 CFR 303.512(a)]

120.69(5) Time extensions; final decisions. The lead agency's procedures described in subrule 120.69(3) must permit an extension of the time limit only if exceptional circumstances exist with respect to a particular complaint, and must include procedures for effective implementation of the lead agency's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. [34 CFR 303.512(b)]

120.69(6) *Complaint and due process hearing filed.* If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not part of the due process action must be resolved within the 60-calendar-day timeline using the complaint procedures described in subrule 120.69(3). If an issue is raised in a complaint that has previously been decided in a due process hearing involving the same parties:

- a. The hearing decision is binding; and
- b. The lead agency must inform the complainant to that effect.

A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by the lead agency. [34 CFR 303.512(c)]

281—120.70(34CFR303) Mediation.

120.70(1) *General.* The signatory parties shall ensure that mediation procedures are established and implemented by grantees to allow parties to dispute matters involving refusal to initiate or change the identification, evaluation, or placement of a child, or the provision of appropriate early intervention services to the child and the child's family. At a minimum, the mediation process to resolve a dispute must be available whenever a hearing is requested under rule 281—120.71(34CFR303). [34 CFR 303.419(a)]

120.70(2) *Requirements.*

- a. The procedures must meet the following requirements:
 - (1) The mediation process shall be voluntary on the part of the parties;
 - (2) The mediation process shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under these rules; and
 - (3) The mediation process shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. [34 CFR 303.419(b)(1)]
- b. The lead agency shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
- c. The lead agency shall bear the cost of the mediation process, including the costs of mediation meetings.
- d. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- e. An agreement reached in the mediation process by the parties to the dispute must be set forth in a written mediation agreement.
- f. Discussions that occur during the mediation process must be confidential and shall not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process shall be required to sign a confidentiality pledge prior to the commencement of the process. [34 CFR 303.419(b)(2)]

120.70(3) *Meeting to encourage mediation.* Parents who elect not to use the mediation process may meet with a disinterested party who is under contract with the state parent training and information center or an appropriate alternative dispute resolution entity that shall explain the benefits of the mediation process and encourage the parents to use the process. The meeting shall be carried out at a time and location that is reasonably convenient to the parents. [34 CFR 303.419(c)]

281—120.71(34CFR303) Due process hearings.

120.71(1) General. The lead agency shall ensure that there are written procedures for a timely administrative resolution of requests for hearings filed by parents of eligible children concerning early intervention matters described in subrule 120.70(1). [34 CFR 303.420]

120.71(2) Administrative law judge. The lead agency must ensure that any due process hearings carried out are conducted by an administrative law judge who:

- a. Has knowledge about Early ACCESS and Part C of IDEA and the needs of and services available for eligible children and their families;
- b. Is not an employee of any agency or other entity involved in the provision of early intervention services or care of the child; and
- c. Does not have a personal or professional interest that would conflict with the administrative law judge's objectivity in implementing the process.

The administrative law judge's duties include listening to the presentation of relevant viewpoints about the dispute that is the subject of the hearing, examining all information relevant to the issues, seeking to reach a timely resolution of the dispute, and providing a record of the proceedings, including a written decision. [34 CFR 303.421]

120.71(3) Parental rights in due process hearings. Any parent involved in a due process hearing has the right to:

- a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for eligible children;
- b. Present evidence and confront, cross-examine and compel the attendance of witnesses;
- c. Prohibit the introduction of any evidence of the proceeding that has not been disclosed to the parent at least five days before the proceeding;
- d. Obtain a written or electronic verbatim transcription of the proceeding; and
- e. Obtain written findings of fact and decisions. [34 CFR 303.422]

120.71(4) Convenience of hearings and timelines.

- a. Any due process hearing must be carried out at a time and place that is reasonably convenient to the parent.
- b. Within 30 days after the receipt of a parent's request for a due process hearing, the impartial hearing shall be conducted and a copy of the written decision shall be mailed to each of the parties. [34 CFR 303.423]

120.71(5) Status of child during proceedings. During the pendency of any proceeding involving a request for a due process hearing, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided. If the hearing involves an application for initial services, the child must receive those services that are not in dispute. [34 CFR 303.425]

120.71(6) System-level disputes. System-level disputes involve conflicts over the roles or responsibilities of an agency partner within the Early ACCESS system. System-level disputes may involve financial matters, the implementation of Early ACCESS system aspects that are not law or rules, such as interagency agreements and policies and procedures, or the implementation of provisions of the interagency agreement. The interagency agreement shall detail the resolution of informal and formal intra-agency and interagency system-level disputes. [34 CFR 303.523; 303.524]

120.71(7) Delivery of services in a timely manner. Each grantee shall be responsible for the development of procedures to ensure that services are provided to children eligible for Early ACCESS in a timely manner, pending the resolution of disputes among public agencies or service providers. [34 CFR 303.525]

120.71(8) Civil action. Any party aggrieved by the findings of an administrative law judge has the right to bring a civil action in state or federal court. [34 CFR 303.424]

281—120.72 to 120.74 Reserved.

DIVISION X
CONTINUOUS IMPROVEMENT MONITORING

281—120.75(34CFR303) Monitoring. The signatory agencies shall implement an interagency continuous improvement monitoring system that focuses on self-assessment, improvements based on self-assessment, and state-level validation of integrated service system functioning and compliance efforts to improve outcomes for children and families. [34 CFR 303.501]

120.75(1) Evaluation and improvement. Each grantee, in conjunction with signatory agencies or the lead agency, or both, shall implement activities designed to evaluate and improve the Early ACCESS system. These activities shall document the performance of eligible children resulting from the provision of early intervention services.

120.75(2) Research. Each grantee shall cooperate in research activities designed to evaluate and improve the Early ACCESS system when such activities are sponsored by the lead agency, or a signatory agency when approved by the lead agency, to assess and ensure the effectiveness of efforts to serve eligible children.

120.75(3) Records and reports. Each signatory agency or grantee shall maintain sufficient records and reports for audit by the lead agency. Records and reports shall include at a minimum:

- a. State-approved or recognized certification, licensing, registration, or other comparable requirements for all personnel providing early intervention services.
- b. All IFSP meetings and annual or periodic reviews for each eligible child.
- c. Data required for federal and state reporting.

281—120.76 and 120.77 Reserved.

DIVISION XI
FINANCIAL RESPONSIBILITY

281—120.78(34CFR303) Services at public expense for eligible children and families, and coordination of interagency resources. The state shall provide early intervention services as defined in rule 281—120.14(34CFR303) for eligible children at no charge to the child and parent. The signatory agencies shall be responsible for the identification and coordination of all available resources for early intervention services within the state, including federal, state, local and private sources, and for updating this information if a legislative or policy change is made under any of these sources. Federal funding sources include:

1. Title V of the Social Security Act, relating to Maternal and Child Health;
2. Title XIX of the Social Security Act, relating to the general Medicaid Program, and Early Periodic Screening, Diagnosis, and Treatment (EPSDT);
3. The Head Start Act;
4. Parts B and C of IDEA;
5. The Developmental Disabilities Assistance and Bill of Rights Act, Public Law 94-103; and
6. Other federal programs. [34 CFR 303.521; 303.522]

281—120.79(34CFR303) Interagency agreement. The signatory agencies shall have provisions within a current interagency agreement that defines the financial responsibility for paying for or providing early intervention services in accordance with state law and Part C of IDEA. The interagency agreement shall include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service, or disputes about other matters related to the state's early intervention program. Such procedures must include a mechanism for making a final determination that is binding upon the agencies involved. The interagency agreement shall include any additional provisions necessary to ensure effective cooperation and coordination among all agencies involved in the Early ACCESS system. [34 CFR 303.523]

281—120.80(34CFR303) Payer of last resort. Part C funds may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of Part C. Early ACCESS funds, state and federal, shall be used only for early intervention services that an eligible child needs but is not currently entitled to under any other federal, state, local or private source. [34 CFR 303.527(a)]

281—120.81(34CFR303) Nonsupplanting and payment for services. Part C funds shall be used to supplement the level of state and local funds expended for eligible children and their families for Early ACCESS, and in no case to supplant those state and local funds. To meet the requirements of nonsupplanting, the total amount of state and local funds budgeted for expenditures in the current fiscal year for early intervention services for eligible children and their families under Early ACCESS must be at least equal to the total amount of state and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

1. Decreases in the number of children who are eligible to receive early intervention services under Early ACCESS; and
2. Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment and the construction of facilities. [34 CFR 303.124]

Proceeds from public or private insurance are not treated as program income for purposes of calculating nonsupplanting requirements. If a public agency spends reimbursements from federal funds such as Medicaid, or uses private insurance payments for early intervention services, these funds also shall not be considered state or local funds for purpose of the nonsupplanting requirements. Nothing in these rules should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations or policy under Title XIX or Title XXI of the Social Security Act, or any other federal insurance program. [34 CFR 303.520(d); 303.527(c)]

281—120.82(34CFR303) Use of insurance. Parents shall not be required to sign up for or enroll in a public insurance program in order for their child to receive early intervention services.

120.82(1) Use of public insurance. Medicaid and other public insurance benefits in which a child participates may be used to provide or pay for early intervention services, as permitted under the public insurance program, except that:

- a. The state shall not require parents to incur an out-of-pocket expense such as the payment of a deductible or copayment amount incurred in filing a public insurance claim for services provided under Early ACCESS. The state must pay the cost that a parent otherwise would be required to pay.

b. The state shall not use a child's benefits under a public insurance program without obtaining parental consent, if that use would:

- (1) Decrease available lifetime coverage or any other insured benefit;
- (2) Result in the family's paying for services that would otherwise be covered by the public insurance program if not for the provision of services under Early ACCESS;
- (3) Increase premiums or lead to the discontinuation of insurance; or
- (4) Risk loss of eligibility for, or decrease in benefits under, home- and community-based waivers, based on aggregate health-related expenditures.

c. If any of the above circumstances apply, the state may use the child's benefits if it obtains a parent's written consent.

d. If the family's public insurance program requires access to the family's private insurance as a precondition:

- (1) Families shall not be required to use their private insurance as a precondition;
- (2) The state may access the private insurance if parents give consent or choose to use private insurance;
- (3) The family's public insurance may not be billed for an amount greater than the cost of the service after subtracting any applicable fee amount owed or paid by the family; and
- (4) Parents must be given the option of using their private insurance, if any, or paying the applicable fee for each service.

120.82(2) *Use of private insurance.* The state may access a parent's private insurance only if a parent provides informed consent. For each service in the initial IFSP and each subsequent change to a service, including a change in the frequency and intensity of delivering the service, in order to access a family's private insurance to fund that service, the state must:

- a.* Obtain parental consent; and
- b.* Inform a parent that refusal to permit the state to access the family's private insurance does not relieve the state of its responsibility to ensure that all required services are provided at no cost to a parent.

120.82(3) *Use of Part C funds.* If parental consent to use a parent's private insurance to pay for a service under Early ACCESS, or public insurance if a parent would incur a cost for the service, cannot be obtained, Part C funds may be used to pay for the service. Part C funds may also be used to pay the cost a parent otherwise would have to pay to use the parent's public or private insurance, such as the deductible or copayment amounts, in order to avoid financial cost to a parent.

281—120.83(34CFR303) Policy for contracting or otherwise arranging for services.

120.83(1) Each agency must have a policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services. This policy must include:

- a.* A requirement that all early intervention services from public or private providers must meet state standards and be consistent with Part C;
- b.* The mechanisms that the lead agency will use in arranging for these services, including the process by which awards or other arrangements are made; and
- c.* The basic requirements that must be met by any individual or organization seeking to provide these services for the lead agency. [34 CFR 303.526]

120.83(2) Interim payments pending reimbursements. If necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, Early ACCESS funds may be used to pay the provider of services, pending reimbursement from the agency or organization that has ultimate responsibility for the payment. Such reimbursement may be made for early intervention services, eligible health services, other functions and services including child find and evaluation and assessment, but not for medical services or well-child health care. [34 CFR 303.527(b)]

120.83(3) Nonreduction of benefits. Medical or other assistance available or eligibility under Title V of the Social Security Act related to maternal and child health or Title XIX of the Social Security Act relating to Medicaid for children eligible for Early ACCESS may not be reduced or altered. [34 CFR 303.527(c)]

281—120.84(34CFR303) Reimbursement procedure. Each signatory agency or grantee must include a procedure for securing the timely reimbursement of Part C or other Early ACCESS funds. [34 CFR 303.528]

281—120.85(34CFR303) Resolution of disputes. During a dispute, the state ombudsman must assign financial responsibility to the appropriate signatory agency pursuant to the interagency agreement. The lead agency must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned the responsibility and for reimbursement of the agency assigned responsibility by the ombudsman if a different agency is assigned responsibility upon final resolution of the dispute. To the extent necessary to ensure compliance with this provision, the lead agency shall refer the dispute to the council or to the governor and implement the procedures to ensure the delivery of services in a timely manner. [34 CFR 303.523, 303.524]

These rules are intended to implement 20 U.S.C. §1401 et seq., and the regulations adopted thereunder found at 34 CFR 303.

[Filed 11/21/02, Notice 8/21/02—published 12/11/02, effective 1/15/03]

[Filed 2/12/07, Notice 1/3/07—published 3/14/07, effective 4/18/07]